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In re Application of	:	
FRED A. KISH (deceased)	:	DECISION ON
Application No.: 09/889,843	:	
PCT No.: PCT/US00/01702	:	PETITION
Int. Filing Date: 24 January 2000	:	
Priority Date: 29 January 1999	:	UNDER 37 CFR 1.42
Attorney Docket no.: 3029-72 US	:	
For: SELF REGULATING FLEXIBLE HEATER:	:	

This is a decision on a submission under 37 CFR 1.42, filed in the United States Patent and Trademark Office (USPTO), in response to a Notification of Missing Requirements, on 08 January 2002.

BACKGROUND

On 20 July 2001, applicant filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee. In response to the Notification of Missing Requirements mailed on 31 August 2001, and to satisfy the requirement that an oath or declaration of the inventors be furnished, applicant filed a declaration on 08 January 2002 that was signed by inventors James Surjan, Tilak R. Varma and Edward Bulgajewski and by Antoinette Chiovatero for inventor Fred A. Kish (deceased). The submission was treated as a request for status under 37 CFR 1.42.

DISCUSSION

Pursuant to 37 CFR § 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

37 CFR 1.497(a)(3) requires that the declaration identify each inventor and the country of citizenship of each inventor. 37 CFR 1.497(b)(2) requires the declaration to state the relationship

of the person (under 37 CFR 1.42) making the declaration for a deceased inventor. 37 CFR 1.497(b)(2) further states that, if the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration must state that the person is a legal representative and indicate the citizenship, residency and mailing address of the legal representative.

The declaration submitted on 08 January 2002 is executed by inventors James Surjan, Tilak R. Varma and Edward Bulgajewski as identified in the published international application. The declaration is also signed by Antoinette Chiovatero for the deceased inventor, Fred A. Kish, without identifying her relationship to the deceased inventor. It appears that the declaration states the country of citizenship, residency and mailing address of Antoinette Chiovatero, but does not provide the same information for deceased inventor as required for compliance with 37 CFR 1.497(a)(3).

The declaration is unacceptable because it does not clearly state the country of citizenship, former residency and mailing address of both the deceased inventor and the legal representative, as required for compliance with 37 CFR 1.497. See also 37 CFR 1.64. The declaration must also clearly state the relationship of the legal representative to the deceased inventor. Accordingly, it is inappropriate, at this time, to accord the application status under 37 CFR 1.42.


CONCLUSION


For the above reasons, the request for status under 37 CFR 1.42 is presently DISMISSED WITHOUT PREJUDICE.

If reconsideration of the merits of the request for status under 37 CFR 1.42 is desired, applicant is required to correct the above-noted defects including the furnishing of an oath/declaration in compliance with 37 CFR 1.42 and 1.497 within TWO (2) MONTHS from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should include a cover letter entitled "Renewed Request Under 37 CFR 1.42" and be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


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